

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2019-055-10006A

Parcel No. 24-03-100-004

**Richard and Lisa Forburger,**

Appellants,

**vs.**

**Kossuth County Board of Review,**

Appellee.

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**Introduction**

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on November 14, 2019. Lisa Forburger was self-represented. Kossuth County Assessor Judy Samp represented the Board of Review.

Richard and Lisa Forburger own a property located at 2106 220 Avenue, Prairie Township in rural Kossuth County. The property's January 1, 2019 assessment was set at \$27,494, allocated as \$22,900 in land value and \$4,594 to improvement value. (Ex. O). The property's classification was changed from agricultural to commercial.

Forburger petitioned the Board of Review asserting the property was misclassified under Iowa Code section 441.37(1)(a)(3). (Ex. 7). The Board of Review denied the petition. (Ex. 8).

Forburger reasserts her claim to PAAB.

**General Principles of Assessment Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

### **Findings of Fact**

The subject property is a 2.58-acre site, of which 0.94 acres are located in a drainage district and exempt from taxation. The site is located in rural Kossuth County and surrounded by farmland. (Ex. M). The site is improved with a 960-square-foot steel utility building, built in 1970 and in poor condition, and two small wood-frame sheds built in 1920 and 1970 also listed in poor condition. (Ex. O). Each of the buildings has electricity and concrete floors but no water or sewer service.

Assessor Judy Samp and her Chief Deputy inspected the property on September 26, 2019, and noted the steel utility building also had steel slide doors and a walkway adjoins the two sheds. These items are not currently listed on the assessment and will increase the improvement valuation from \$4,594 to \$6,426 for assessment year 2020. (Ex. A & P). Inside the utility building Samp observed a boat, canoe, kayak, tool box, traps, and other miscellaneous personal items. Inside the sheds, Samp described the walls as insulated with OSB board and the space is heated with a wood burner when in use. She also noticed cables, a satellite dish, a refrigerator, microwave, and table and chairs. Photographs of the improvements show a golf cart, a Weber grill and curtains hung in the sheds' windows. (Exs. H-J). Samp likened the subject property's improvements to a "man cave". (Ex. A).

Forburger testified she and her husband acquired the site in 2001 from Richard's father. Neither Forburger nor her father-in-law own or farm any other property. Despite this, she asserts the use of the land is for agriculture. (PAAB appeal). She stated the

majority of the site is grass which was harvested for the first time this year by a local farmer for an agreed upon, but yet to be paid, price of \$250. (Ex. 1). 2019 was a poor growing year so they only made one cutting. Forburger stated she has not sold hay in the past, partly due to a lack of interest in the cutting and harvesting of the crop by others. She has no farm equipment, and has never contemplated adding any livestock due to the lack of running water. Forburger testified she maintains a garden plot on the site where she grows potatoes, pumpkins, and squash, but conceded she has not sold any produce in the past. (Ex. 6). Nor has she ever reported farm income or losses on an IRS Schedule F.

Samp testified she reviewed new aerial photography for the entire county in preparation for the 2019 assessment year. She also reviewed information from the Iowa Department of Revenue (IDR) concerning the classification of structures being used for storage purposes. (Ex B). Exhibit B is a 2012 e-mail from Cary Halfpop, Chief Appraiser, Property Tax Division of the Iowa Department of Revenue, directing assessors to classify condominium storage units as commercial rather than residential. This information and her inspection of the property resulted in Samp's conclusion the tract was not used for human habitation or for agricultural use, so the classification was changed to commercial. (Ex A). The farmer representative on the Kossuth County Board of Review, Linda Swifel, agreed that after her visual inspection of the property, she too concluded it was not being used for agricultural purposes. (Ex. S). Samp determined the primary use of the property is to store personal items and to enjoy nature. She acknowledged the commercial classification was not the perfect fit for the subject.

Forburger testified her husband "hangs out on the site" and she was not personally familiar with the items on the improvements or what other activity takes place there. She did state they do not maintain a business there, nor do they store or offer for sale any merchandise there. They do not rent the property and store no equipment from their Wesley car wash business there. Thus she believes the property is misclassified as commercial and should be returned to agricultural.

The Board of Review submitted five properties whose classifications either changed to commercial or were already classified commercial. (Exs. C-G). All of these properties are located in Kossuth County and are small sites, like the subject. However, there was no information provided regarding how those properties are actually used.

### **Analysis & Conclusions of Law**

Forburger asserts the subject property is misclassified under section 441.37(1)(a)(3). She seeks an agricultural classification for the property and bears the burden of proof. § 441.21(3).

IDR has promulgated rules for the classification and valuation of real estate. See Iowa Admin. R. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. Iowa Admin. r. 701-71.1(2). There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. Iowa Admin. r. 701-71.1(1). The determination of a property’s classification “is to be decided on the basis of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989).

Agricultural property includes land and improvements used in good faith primarily for agricultural purposes. Iowa Admin. Code R. 701-71.1(3). Land and nonresidential improvements

shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest and fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in the subrule.

*Id.*

Conversely, commercial real estate “shall include all lands and improvements and structures located thereon which are primarily used or

intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail....” Iowa Admin. Code R. 701-71.1(6).

Forburger admitted the subject site has not been used primarily for agricultural purposes until this year. No hay or produce sales have occurred in the past and 2019 hay sales will total only \$250. As Forburger stated, it is a start of potential agricultural use. We find the recent agricultural activities on the property are not the property’s current and primary use, nor can we conclude they are presently done in good faith for intended profit. Accordingly, we find this property does not meet the requirements for agricultural classification and must affirm the commercial assessment classification.

Confined to arguments the parties made and a choice between agricultural or commercial classifications, we recognize the subject property does not easily fit either. Because there is no readily apparent commercial use, the newly established agricultural activities do not yet demonstrate an intent to profit, and the evidence indicating the property is used substantially for personal storage, gardening, and hobby purposes, we question whether a residential classification may be appropriate in the future. Alternatively, even if a commercial classification is retained, consideration of additional adjustments may be necessary to recognize the impaired feasibility and desirability of the property for commercial use.

Viewing the record as a whole, Forburger did not establish that the 2019 property classification should be changed to agricultural.

## **Order**

PAAB HEREBY AFFIRMS the Kossuth County Board of Review’s action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2019).

Any application for reconsideration or rehearing shall be filed with PAAB within 30 days of the date of this Order and comply with the requirements of PAAB

administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.



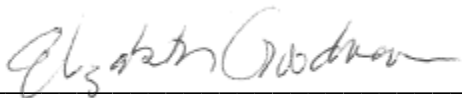
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Karen Oberman, Board Member



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Dennis Loll, Board Member



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Elizabeth Goodman, Board Member

Copies to:

Rick Lisa Forburger  
305 2nd St. N.  
Wesley, IA 50483

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